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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/525,978	07/29/2005	Rowan Dallimore	47113-0004	5012
55694 7590 02/03/2009 DRINKER BIDDLE & REATH (DC) 1500 K STREET, N.W. SUITE 1100 WASHINGTON, DC 20005-1209				
EXAMINER				
MILLER, BENA B				
ART UNIT		PAPER NUMBER		
3725				
MAIL DATE		DELIVERY MODE		
02/03/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/525,978

**Applicant(s)**

DALLIMORE ET AL.

**Examiner**

Bena Miller

**Art Unit**

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6, 7, 8 and 12-20 are finally rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 6 and 15, there is lack of antecedent basis for the limitation "its lower face".

Regarding claims 7, 12 and 17, there is lack of antecedent basis for the limitation "the upper face".

Regarding claim 8, there is lack of antecedent basis for the limitation "the upper surface of lower wear plates"

Regarding the claim 13, the examiner is unsure if applicant is claiming the combination of distributor plate and the rotor or the subcombination of distributor plate, only. This in turn, is because while line 1 of the claim appears to indicate that applicant's intention is to claim only the distributor plate, other portions of the claims recite limitations which are dependent on the rotor (Note claim 3, lines 1-3, for example only). In this Office Action, the examiner presumes that the applicant's intention is to prosecute the subcombination of the distributor plate, in order that the claims are given their broadest reasonable interpretation. Accordingly, all additional limitations that are

dependent on the rotor are not considered further structurally limiting with respect to the claimed device.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 3, 5, 6, 8, 10, 13, 15, 19 and 20 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Arnold (US Patent 5,145,279).

The device of Arnold reads on the limitations of the claimed invention including an equilateral polygon distributor plate (148) and a rotor (combination of 90, 164 and 152) having an opening (col. 7, line 61 to col. 8, line 18) and at least one outflow opening (formed via vanes 152—fig.4). Regarding claim 3, the number of sides of the polygon being chosen is selected such that the number of sides is 1, 2 or 3 times the number of outflow openings of the rotor to which the distributor plate is mounted (figure 4). Regarding claim 5, at least one straight edge of the plate parallel to an outflow direction of material (fig.4). Regarding claims 6 and 15, a recess at the center of the plate (fig.4). Regarding claims 10 and 19, a mounting means 56 comprising a hole with inner thread (fig.7). Regarding claim 8, the distributor plate has a lower surface (Applicant's attention is direct to the 112 rejection above in reference to the lower wear plates).

Claims 13, 14 and 19 are finally rejected under 35 U.S.C. 102(b) as being anticipated by Larcheron et al (US Patent 5,145,279).

Larcheron et al teaches the elements of the claimed invention including a triangular equilateral polygon distribution plate (fig.4) and a mounting means (col.4, line 65).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 4, 7, 14 and 16 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold.

Arnold teaches most of the elements of the claimed invention except for distributor plate selected from the shapes claimed and the recess extending only a part of the thickness of the distributor plate. It would have been considered a mere design choice to have the shape of the distributor plate of Arnold selected from the claimed group for the purpose of creating a specific flow of the material when discharged from the rotor. It would have also been obvious to have the number of sides of the plate 2 times the number of outflow openings of the rotor and the recess extending only a part of the thickness of the distributor plate of Arnold for the purpose of creating a specific flow of the material when discharged from the rotor.

Claims 9, 12, 17 and 18 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Arnold in view of Garland.

Arnold teaches most of the elements of the claimed invention except for an unbroken layer of hard metal and tungsten carbide. Garland teaches that it is well known use hard metal and tungsten carbide for removable parts in a comminuting machine for the purpose of providing a wear resistance for the device (col. 1, par. 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to use hard metal and tungsten carbide, as suggested by Garland for the distributor plate of Ashland for the reasons set forth above.

#### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

#### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bena Miller whose telephone number is 571.272.4427. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bena Miller/  
Primary Examiner, Art Unit 3725  
February 2, 2009